

Amendments to subchapter governing

Texas Home Living (TxHmL) Program Chapter 9, Subchapter N

EFFECTIVE DATE: July 1, 2015

DADS maintains the formatted version of TxHmL Program rules on its website to enhance public access to information concerning the programs. The *Texas Register* and the Texas Administrative Code remain the official sources for all DADS rules.

Key Changes in the Subchapter

The adopted rules clarify that a TxHmL program provider may mail or fax the required DADS form needed to submit a request to DADS for an informal review of any of the findings in a preliminary review report.

The adopted rules permit, rather than require, DADS to take certain actions if a corrective action plan is not submitted as required or is not approved by DADS, or if DADS determines that a TxHmL program provider falsified documentation to demonstrate compliance with the certification principles. These changes are intended to address the potential situation that none of the described actions are appropriate to the particular circumstances presented. In addition, the adopted rules add to the actions DADS may take if a corrective action plan is not submitted or approved, that DADS may request that the program provider submit a revised corrective action plan within a time period determined by DADS. This change expands DADS options in resolving non-compliance by a provider. The adopted rules also delete the use of "condition of a pervasive nature" as a factor in determining

DADS actions from a review. This change was made because DADS evaluates compliance based on whether or not the provider's failure to comply with a principle results in a condition of a serious nature, as defined in the rules. Therefore, a separate category regarding conditions of a pervasive nature is not necessary.

Process

The amendments were proposed for public comment in January 9, 2015, issue of the *Texas Register* and adopted in the May 22, 2015, issue of the *Texas Register*.

Questions

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40 TAC, CHAPTER 9, SUBCHAPTER N
TEXAS HOME LIVING (TxHmL) PROGRAM

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§9.551. Purpose.

Effective: September 1, 2014

The purpose of this subchapter is to describe:

- (1) the eligibility criteria and process for enrollment in the TxHmL Program;
- (2) the requirements for TxHmL Program provider certification and process for certifying

and sanctioning program providers in the TxHmL Program;

(3) the requirements for reimbursement of program providers; and

(4) the requirements for local authorities and the process for correcting practices found to be out of compliance with the TxHmL Program principles for local authorities.

§9.552. Application.

Effective: September 1, 2014

This subchapter applies to local authorities, program providers, and persons applying for or receiving TxHmL Program services and their LARs.

§9.553. Definitions.

Effective: July 1, 2015

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) **Applicant** -- A Texas resident seeking services in the TxHmL Program.

(2) **Business day** -- Any day except a Saturday, a Sunday, or a national or state holiday listed in Texas Government Code §662.003(a) or (b).

(3) **Calendar day** -- Any day, including weekends and holidays.

(4) **CDS option** -- Consumer directed services option. A service delivery option as defined in §41.103 of this title (relating to Definitions).

(5) **CMS** -- Centers for Medicare and Medicaid Services. The federal agency that administers Medicaid programs.

(6) **Competitive employment** -- Employment that pays an individual at least minimum wage if the individual is not self-employed.

(7) **Condition of a serious nature** -- Except as provided in paragraph (14) of this section, a condition in which a program provider's

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noncompliance with a certification principle caused or could cause physical, emotional, or financial harm to one or more of the individuals receiving services from the program provider.

(8) **Contract** -- A provisional contract or a standard contract.

(9) **Critical incident** -- An event listed in the TxHmL Provider User Guide found at <http://www2.mhmr.state.tx.us/655/cis/training/txhmlGuide.html>.

(10) **DADS** -- The Department of Aging and Disability Services.

(11) **DFPS** -- The Department of Family and Protective Services.

(12) **FMS** -- Financial management services. A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option.

(13) **FMSA** -- Financial management services agency. As defined in §41.103 of this title, an entity that provides financial management services to an individual participating in the CDS option.

(14) **Hazard to health or safety** -- A condition in which serious injury or death of an individual or other person is imminent because of a program provider's noncompliance with a certification principle.

(15) **HCS Program** -- The Home and Community-based Services Program operated by DADS as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(16) **HHSC** -- The Texas Health and Human Services Commission.

(17) **ICAP** -- Inventory for Client and Agency Planning.

(18) **ICF/IID** -- A facility in which ICF/IID Program services are provided.

(19) **ICF/IID Program** -- The Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions Program, which provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions.

(20) **ICF/MR Program** -- ICF/IID Program.

(21) **ID/RC Assessment** -- A form

used by DADS for LOC determination and LON assignment.

(22) **Implementation Plan** -- A written document developed by a program provider for an individual that, for each TxHmL Program service on the individual's IPC not provided through the CDS option, includes:

(A) a list of outcomes identified in the PDP that will be addressed using TxHmL Program services;

(B) specific objectives to address the outcomes required by subparagraph (A) of this paragraph that are:

(i) observable, measurable, and outcome-oriented; and

(ii) derived from assessments of the individual's strengths, personal goals, and needs;

(C) a target date for completion of each objective;

(D) the number of TxHmL Program units of service needed to complete each objective;

(E) the frequency and duration of TxHmL Program services needed to complete each objective; and

(F) the signature and date of the individual, LAR, and the program provider.

(23) **Individual** -- A person enrolled in the TxHmL Program.

(24) **Intellectual disability** -- Significant sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(25) **IPC** -- Individual plan of care. A document that describes the type and amount of each TxHmL Program service to be provided to an individual and medical and other services and supports to be provided through non-TxHmL Program resources.

(26) **IPC cost** -- Estimated annual cost of program services included on an IPC.

(27) **IPC year** -- A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(28) **LAR** -- Legally authorized representative. A person authorized by law to act

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on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(29) **LOC** -- Level of care. A determination made by DADS about an applicant or individual as part of the TxHmL Program eligibility determination process based on data electronically transmitted on the ID/RC Assessment.

(30) **Local authority** -- An entity described in Texas Health and Safety Code, §531.002(11) to which the executive commissioner of HHSC has delegated authority and responsibility in accordance with Texas Health and Safety Code, §533.035(a).

(31) **LON** -- Level of need. An assignment given by DADS for an applicant or individual that is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the ID/RC Assessment.

(32) **LVN** -- Licensed vocational nurse. A person licensed to practice vocational nursing in accordance with Texas Occupations Code, Chapter 301.

(33) **Microboard** -- A program provider:

(A) that is a non-profit corporation;
(i) that is created and operated by no more than 10 persons, including an individual;
(ii) the purpose of which is to address the needs of the individual and directly manage the provision of the TxHmL Program services; and

(iii) in which each person operating the corporation participates in addressing the needs of the individual and directly managing the provision of TxHmL Program services; and

(B) that has a service capacity designated in the DADS data system of no more than three individuals.

(34) **Non-routine circumstances** -- An event that occurs unexpectedly or does not occur on a regular basis, such as a night off, a

vacation, an illness, an injury, a hospitalization, or a funeral.

(35) **Own home or family home** -- A residence that is not:

(A) an ICF/IID licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(B) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(C) an assisted living facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247;

(D) a residential child-care operation licensed or subject to being licensed by DFPS unless it is a foster family home or a foster group home;

(E) a facility licensed or subject to being licensed by the Department of State Health Services;

(F) a residential facility operated by the Department of Assistive and Rehabilitative Services;

(G) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison; or

(H) a setting in which two or more dwellings, including units in a duplex or apartment complex, single family homes, or facilities listed in subparagraphs (A) - (G) of this paragraph, but excluding supportive housing under Section 811 of the National Affordable Housing Act of 1990, meet all of the following criteria:

(i) the dwellings create a residential area distinguishable from other areas primarily occupied by persons who do not require routine support services because of a disability;

(ii) most of the residents of the dwellings are persons with an intellectual disability; and

(iii) the residents of the dwellings are provided routine support services through personnel, equipment, or service facilities shared with the residents of the other dwellings.

(36) **Performance contract** -- A written agreement between DADS and a local

authority for the provision of one or more functions as described in THSC, §533.035(b).

(37) **PDP** -- Person-directed plan. A plan developed for an applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR on behalf of the applicant.

(38) **Program provider** -- A person, as defined in §49.102 of this title (relating to Definitions), that has a contract with DADS to provide TxHmL Program services, excluding an FMSA.

(39) **Provisional contract** -- An initial contract that DADS enters into with a program provider in accordance with §49.208 of this title (relating to Provisional Contract Application Approval) that has a stated expiration date.

(40) **Related condition** -- A severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with an intellectual disability, and requires treatment or services similar to those required for individuals with an intellectual disability;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(41) **Respite facility** -- A site that is not a residence and that is owned or leased by a program provider for the purpose of providing out-of-home respite to not more than six individuals receiving TxHmL Program services or other persons receiving similar services at any one time.

(42) **RN** -- Registered nurse. A person licensed to practice professional nursing in accordance with Texas Occupations Code, Chapter 301.

(43) **Seclusion** -- The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(44) **Service backup plan** -- A plan that ensures continuity of a service that is critical to an individual's health and safety if service delivery is interrupted.

(45) **Service coordinator** -- An employee of a local authority who is responsible for assisting an applicant, individual, or LAR to access needed medical, social, educational, and other appropriate services including TxHmL Program services.

(46) **Service planning team** -- A planning team constituted by a local authority consisting of an applicant or individual, LAR, service coordinator, and other persons chosen by the applicant, individual, or LAR.

(47) **Service provider** -- A person, who may be a staff member, who directly provides a TxHmL Program service to an individual.

(48) **Staff member** -- An employee or contractor of a TxHmL Program provider.

(49) **Standard contract** -- A contract that DADS enters into with a program provider in accordance with §49.209 of this title (relating to Standard Contract) that does not have a stated expiration date.

(50) **State supported living center** -- A state-supported and structured residential facility operated by DADS to provide to persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a

community-based facility owned by DADS.

(51) **Support consultation** -- A service, as defined in §41.103 of this title, that is provided to an individual participating in the CDS option at the request of the individual or LAR.

(52) **TAC** -- Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(53) **THSC** -- Texas Health and Safety Code. Texas statutes relating to health and safety.

(54) **TxHmL Program** -- The Texas Home Living Program, operated by DADS and approved by CMS in accordance with §1915(c) of the Social Security Act, that provides community-based services and supports to eligible individuals who live in their own homes or in their family homes.

(55) **Vendor hold** -- A temporary suspension of payments that are due to a program provider under a contract.

§9.554. Description of the TxHmL Program.

Effective: September 1, 2014

(a) The TxHmL Program is a Medicaid waiver program approved by the CMS pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals who live in their own homes or in their family homes. The TxHmL Program is operated by DADS under the authority of HHSC.

(b) DADS has grouped the counties of the state of Texas into geographical areas, referred to as "local service areas," each of which is served by a local authority. DADS has further grouped the local service areas into "waiver contract areas." A list of the counties included in each local service area and waiver contract area is available at www.dads.state.tx.us.

(1) A program provider may provide TxHmL Program services only to persons residing in the counties specified in its contract.

(2) A program provider must have a separate contract for each waiver contract area served by the program provider.

(3) A program provider may have a

contract to serve one or more local service areas within a waiver contract area, but the program provider must serve all of the counties within each local service area covered by the contract.

(4) A program provider may not have more than one contract per waiver contract area.

(c) The local authority must provide service coordination to an individual who is enrolled in the TxHmL Program in accordance with this subchapter.

(d) TxHmL Program services, as defined in §9.555 of this subchapter (relating to Definitions of TxHmL Program Services), are selected by the service planning team for inclusion in an applicant's or individual's IPC to:

(1) ensure the applicant's or individual's health and welfare in the community;

(2) supplement rather than replace the applicant's or individual's natural supports and other non-TxHmL Program sources for which the applicant or individual may be eligible; and

(3) prevent the applicant's or individual's admission to institutional services.

(e) The CDS option is a service delivery option, as described in Chapter 41 of this title (relating to Consumer Directed Services Option), in which an individual or LAR employs and retains service providers and directs the delivery of one or more services that may be provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option).

(f) A program provider must comply with all applicable state and federal laws, rules, and regulations, including Chapter 49 of this title (relating to Contracting for Community Services).

§9.555. Definitions of TxHmL Program Services.

Effective: September 1, 2014

(a) Community support provides services and supports in an individual's home and at other community locations that are necessary to achieve outcomes identified in an individual's PDP.

(1) Community support provides habilitative or support activities that:

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(A) provide or foster improvement of or facilitate an individual's ability to perform functional living skills and other activities of daily living;

(B) assist an individual to develop competencies in maintaining the individual's home life;

(C) foster improvement of or facilitate an individual's ability and opportunity to:

(i) participate in typical community activities including activities that lead to successful employment;

(ii) access and use of services and resources available to all citizens in the individual's community;

(iii) interact with members of the community;

(iv) access and use available non-TxHmL Program services or supports for which the individual may be eligible; and

(v) establish or maintain relationships with people who are not paid service providers that expand or sustain the individual's natural support network.

(2) Community support, as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(3) Community support does not include payment for room or board.

(4) Community support may not be provided to the individual at the same time that any of the following services is provided:

(A) respite;

(B) day habilitation;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

(b) Day habilitation assists an individual to acquire, retain, or improve self-help, socialization, and adaptive skills necessary to live successfully in the community and participate in home and

community life.

(1) Day habilitation provides:

(A) individualized activities consistent with achieving the outcomes identified in the individual's PDP;

(B) activities necessary to reinforce therapeutic outcomes targeted by other waiver services, school, or other support providers;

(C) services in a group setting other than the individual's home for normally up to five days a week, six hours per day;

(D) personal assistance for an individual who cannot manage personal care needs during the day habilitation activity;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(F) transportation during the day habilitation activity necessary for the individual's participation in day habilitation activities.

(2) Day habilitation may not be provided at the same time that any of the following services is provided:

(A) respite;

(B) community support;

(C) employment assistance with the individual present; or

(D) supported employment with the individual present.

(c) Nursing provides treatment and monitoring of health care procedures ordered or prescribed by a practitioner and as required by standards of professional practice or state law to be performed by an RN or LVN. Nursing includes:

(1) administering medication;

(2) monitoring an individual's use of medications;

(3) monitoring an individual's health risks, data, and information, including ensuring that an unlicensed service provider is performing only those nursing tasks identified in a nursing assessment;

(4) assisting an individual or LAR to

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secure emergency medical services for the individual;

(5) making referrals for appropriate medical services;

(6) performing health care procedures as ordered or prescribed by a practitioner and required by standards of professional practice or law to be performed by an RN or LVN;

(7) delegating nursing tasks assigned to an unlicensed service provider and supervising the performance of those tasks in accordance with state law and rules;

(8) teaching an unlicensed service provider about the specific health needs of an individual;

(9) performing an assessment of an individual's health condition;

(10) an RN doing the following:

(A) performing a nursing assessment for each individual:

(i) before an unlicensed service provider performs a nursing task for the individual unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(ii) as determined necessary by an RN, including if the individual's health needs change;

(B) documenting information from performance of a nursing assessment;

(C) if an individual is receiving a service through CDS, providing a copy of the documentation described in described in subparagraph (B) of this paragraph to the individual's service coordinator;

(D) developing the nursing service portion of an individual's implementation plan required by §9.578(c)(2) of this subchapter (relating to Program Provider Certification Principles: Service Delivery), which includes developing a plan and schedule for monitoring and supervising delegated nursing tasks; and

(E) making and documenting decisions related to the delegation of a nursing task to an unlicensed service provider;

(11) in accordance with Texas Human Resources Code, Chapter 161:

(A) allowing an unlicensed service provider to provide administration of medication to an individual without the delegation or oversight of an RN if:

(i) an RN has performed a nursing assessment and, based on the results of the assessment, determined that the individual's health permits the administration of medication by an unlicensed service provider;

(ii) the medication is:

(I) an oral medication;

(II) a topical medication; or

(III) a metered dose inhaler;

(iii) the medication is administered to the individual for a predictable or stable condition; and

(iv) the unlicensed service provider has been:

(I) trained by an RN or an LVN under the direction of an RN regarding the proper administration of medication; or

(II) determined to be competent by an RN or an LVN under the direction of an RN regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed service provider; and

(B) ensuring that an RN or an LVN under the supervision of an RN reviews the administration of medication to an individual by an unlicensed service provider at least annually and after any significant change in the individual's condition.

(d) Employment assistance:

(1) is assistance provided to an individual to help the individual locate competitive employment in the community;

(2) consists of a service provider performing the following activities:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and

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requirements;

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment;

(D) transporting the individual to help the individual locate competitive employment in the community; and

(E) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or supported employment is provided;

(4) does not include using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) for supervision, training, support, or adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in employment assistance activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(e) Supported employment:

(1) is assistance provided to an individual:

(A) who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed; and

(B) in order for the individual to sustain competitive employment;

(2) consists of a service provider performing the following activities:

(A) making employment adaptations, supervising, and providing training related to an individual's assessed needs;

(B) transporting the individual to support the individual to be self-employed, work from home, or perform in a work setting; and

(C) participating in service planning team meetings;

(3) is not provided to an individual with the individual present at the same time that respite, community support, day habilitation, or employment assistance is provided;

(4) does not include sheltered work or other similar types of vocational services furnished in specialized facilities, or using Medicaid funds paid by DADS to the program provider for incentive payments, subsidies, or unrelated vocational training expenses, such as:

(A) paying an employer:

(i) to encourage the employer to hire an individual; or

(ii) to supervise, train, support, or make adaptations for an individual that the employer typically makes available to other workers without disabilities filling similar positions in the business; or

(B) paying the individual:

(i) as an incentive to participate in supported employment activities; or

(ii) for expenses associated with the start-up costs or operating expenses of an individual's business; and

(5) as determined by an assessment conducted by an RN, provides assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(f) Behavioral support provides specialized interventions that assist an individual to increase adaptive behaviors to replace or modify maladaptive or socially unacceptable behaviors that prevent or interfere with the individual's inclusion in home and family life or community

life. Behavioral support includes:

(1) assessment and analysis of assessment findings of the behavior(s) to be targeted necessary to design an appropriate behavioral support plan;

(2) development of an individualized behavioral support plan consistent with the outcomes identified in the individual's PDP;

(3) training of and consultation with the LAR, family members, or other support providers and, as appropriate, with the individual in the purpose/objectives, methods and documentation of the implementation of the behavioral support plan or revisions of the plan;

(4) monitoring and evaluation of the success of the behavioral support plan implementation; and

(5) modification, as necessary, of the behavioral support plan based on documented outcomes of the plan's implementation.

(g) Adaptive aids enable an individual to increase mobility, the ability to perform activities of daily living, or the ability to perceive, control, or communicate with the environment in which the individual lives. Adaptive aids include devices, controls, appliances, or supplies and the repair or maintenance of such aids, if not covered by warranty, as specified in the *TxHmL Program Billing Guidelines*.

(1) Adaptive aids are provided to address specific needs identified in an individual's PDP and are limited to:

- (A) lifts;
- (B) mobility aids;
- (C) positioning devices;
- (D) control switches/pneumatic switches and devices;
- (E) environmental control units;
- (F) medically necessary supplies;
- (G) communication aids;
- (H) adapted/modified equipment for activities of daily living; and
- (I) safety restraints and safety devices.

(2) Adaptive aids may be provided up to a maximum of \$10,000 per individual per IPC year.

(3) Adaptive aids do not include items or

supplies that are not of direct medical or remedial benefit to the individual or that are available to the individual through the Medicaid State Plan, through other governmental programs, or through private insurance.

(h) Minor home modifications are physical adaptations to the individual's home that are necessary to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence in the home and the repair or maintenance of such adaptations, if not covered by warranty.

(1) Minor home modifications may be provided up to a lifetime limit of \$7,500 per individual. After the \$7,500 lifetime limit has been reached, an individual is eligible for an additional \$300 per IPC year for additional modifications or maintenance of home modifications.

(2) Minor home modifications do not include adaptations or improvements to the home that are of general utility, are not of direct medical or remedial benefit to the individual, or add to the total square footage of the home.

(3) Minor home modifications are limited to:

- (A) purchase and repair of mobility/wheelchair ramps;
 - (B) modifications to bathroom facilities;
 - (C) modifications to kitchen facilities;
- and
- (D) specialized accessibility and safety adaptations.

(i) Dental treatment may be provided up to a maximum of \$1,000 per individual per IPC year for the following treatments:

- (1) emergency dental treatment;
- (2) preventive dental treatment;
- (3) therapeutic dental treatment; and
- (4) orthodontic dental treatment, excluding cosmetic orthodontia.

(j) Respite is provided for the planned or emergency short-term relief of the unpaid caregiver of an individual when the caregiver is temporarily unavailable to provide supports due to non-routine circumstances.

(1) Respite includes:

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(A) assistance with activities of daily living and functional living tasks;

(B) assistance with planning and preparing meals;

(C) transportation or assistance in securing transportation;

(D) assistance with ambulation and mobility;

(E) as determined by an assessment conducted by an RN, assistance with medications and the performance of tasks delegated by an RN in accordance with state law and rules, unless a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician;

(F) habilitation and support that facilitate:

(i) an individual's inclusion in community activities, use of natural supports and typical community services available to all people;

(ii) an individual's social interaction and participation in leisure activities; and

(iii) development of socially valued behaviors and daily living and independent living skills.

(2) Reimbursement for respite provided in a setting other than the individual's residence includes payment for room and board.

(3) Respite may be provided in the individual's residence or, if certification principles stated in §9.578(p) of this subchapter are met, in other locations.

(k) Professional therapies provide assessment and treatment by a licensed professional who meets the qualifications specified in §9.579 of this subchapter (relating to Certification Principles: Qualified Personnel) and include training and consultation with an individual's LAR, family members or other support providers. Professional therapies available under the TxHmL Program are:

- (1) audiology services;
- (2) speech/language pathology services;
- (3) occupational therapy services;
- (4) physical therapy services;
- (5) dietary services;
- (6) social work services; and

(7) behavioral support.

(l) FMS are provided if the individual participates in the CDS option.

(m) Support consultation is provided at the request of the individual or LAR if the individual participates in the CDS option.

§9.556. Eligibility Criteria.

Effective: September 1, 2014

(a) An applicant or individual is eligible for the TxHmL Program if:

(1) the applicant or individual meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) the applicant or individual meets one of the following criteria:

(A) based on a determination of an intellectual disability performed in accordance with Texas Health and Safety Code, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination), qualifies for an ICF/IID LOC I as defined in §9.238 of this chapter (relating to Level of Care I Criteria); or

(B) meets the following criteria:

(i) based on a determination of an intellectual disability performed in accordance with Texas Health and Safety Code, Chapter 593, Subchapter A and as determined by DADS in accordance with §9.560 of this subchapter, qualifies for one of the following levels of care:

(I) an ICF/IID LOC I as defined in §9.238 of this chapter; or

(II) an ICF/IID LOC VIII as defined in §9.239 of this chapter (relating to ICF/MR Level of Care VIII Criteria);

(ii) meets one of the following:

(I) resides in a nursing facility immediately prior to enrolling in the TxHmL Program; or

(II) is at imminent risk of entering a nursing facility as determined by DADS; and

(iii) is offered a TxHmL Program vacancy designated for a member of the reserve capacity group "Individuals with a level of care I

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or VIII residing in a nursing facility" included in Appendix B of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us;

(3) the applicant or individual has been assigned an LON 1, 5, 8, or 6 in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment);

(4) the applicant or individual has an IPC approved in accordance with §9.558 of this subchapter (relating to Individual Plan of Care (IPC));

(5) the applicant or individual is not enrolled in another waiver program under §1915(c) of the Social Security Act;

(6) the applicant or individual has chosen, or the applicant's or individual's LAR has chosen, participation in the TxHmL Program over participation in the ICF/IID Program;

(7) the applicant's or individual's service planning team concurs that the TxHmL Program services and, if applicable, non-TxHmL Program services for which the applicant or individual may be eligible are sufficient to ensure the applicant's or individual's health and welfare in the community; and

(8) the applicant or individual lives in the applicant's or individual's own home or family home.

(b) An applicant or individual is financially eligible for the TxHmL Program if the applicant or individual:

(1) is categorically eligible for Supplemental Security Income (SSI) benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under 20 years of age and:

(A) is financially the responsibility of DFPS in whole or in part; and

(B) is being cared for in a foster home or group home:

(i) that is licensed or certified and supervised by DFPS or a licensed public or private nonprofit child placing agency; and

(ii) in which a foster parent is the

primary caregiver residing in the home;

(4) is currently receiving Medicaid for Youth Transitioning Out of Foster Care (Transitional Medicaid) because the applicant or individual formerly received foster care through DFPS and was under the financial responsibility of DFPS; or

(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Assistance for Needy Families.

§9.557. [Repealed.]

§9.558. Individual Plan of Care (IPC).

Effective: September 1, 2014

(a) An initial IPC must be developed for each applicant in accordance with §9.567 of this subchapter (relating to Process for Enrollment) and reviewed and revised for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §9.568 of this subchapter (relating to Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals).

(b) The IPC must specify the type and amount of each service to be provided to the individual, as well as services and supports to be provided by other non-TxHmL Program sources during the IPC year. The type and amount of each service must be supported by:

(1) documentation that non-TxHmL Program sources for the service are unavailable and the service supplements rather than replaces natural supports or non-TxHmL Program services;

(2) assessments of the individual that identify specific services necessary for the individual to continue living in the community, to ensure the individual's health and welfare in the community, and to prevent the individual's admission to institutional services; and

(3) documentation of the deliberations and conclusions of the service planning team that the TxHmL Program services are necessary for the individual to live in the community; are necessary to prevent the individual's admission to institutional services, and are sufficient, when

combined with services or supports available from non-TxHmL Program sources (if applicable), to ensure the individual's health and welfare in the community.

(c) Before electronic transmission to DADS, an individual's IPC must be signed and dated by the required service planning team members indicating concurrence that the services recommended in the IPC meet the requirements of subsection (b) of this section.

(d) DADS reviews an electronically transmitted initial, revised, or renewal IPC and approves, modifies, or does not approve the IPC. DADS does not approve an IPC having a total cost that exceeds the combined cost limit specified in Appendix C of the TxHmL Program waiver application approved by CMS.

(e) An electronically transmitted IPC must contain information identical to the information contained on the signed copy of the IPC described in subsection (c) of this section.

(f) DADS may review an IPC at any time to determine if the type and amount of each service specified in the IPC are appropriate. The service coordinator must submit documentation supporting the IPC to DADS in accordance with a request from DADS for documentation.

§9.559. [Repealed.]

§9.560. Level of Care (LOC) Determination.

Effective: September 1, 2014

(a) A local authority must request an LOC determination for an applicant or individual by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LOC. The electronically transmitted ID/RC Assessment must contain information identical to that on the signed ID/RC Assessment.

(b) DADS makes an LOC determination in accordance with §9.237(c) of this chapter (relating to Level of Care).

(c) Information on the ID/RC Assessment must be supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social, and cognitive factors.

(d) The local authority must maintain the signed ID/RC Assessment and documentation supporting the recommended LOC in the applicant's or individual's record.

(e) DADS approves and enters the appropriate LOC into the automated billing and enrollment system or sends written notification to the service coordinator that an LOC has been denied.

(f) An LOC determination is valid for 364 calendar days after the LOC effective date determined by DADS.

§9.561. Lapsed Level of Care (LOC).

Effective: September 1, 2014

(a) To reinstate authorization for payment for days when services were delivered to an individual without a current LOC determination, a local authority must electronically transmit to DADS an ID/RC Assessment for each period of time for which there was a lapsed LOC according to DADS procedures.

(b) The local authority must maintain in the individual's record:

(1) a copy of the individual's most recent ID/RC Assessment approved by DADS; and

(2) an ID/RC Assessment identical to that electronically transmitted in accordance with subsection (a) of this section for each period of time for which there was a lapsed LOC.

(c) DADS does not grant a request for reinstatement of an LOC determination:

(1) to establish program eligibility;

(2) to renew an LOC determination;

(3) to obtain an LOC determination for a period of time for which an LOC has been denied;

(4) to revise an LON; or

(5) for a period of time for which an individual's IPC is or was not current.

§9.562. Level of Need (LON) Assignment.

Effective: September 1, 2014

(a) A local authority must request DADS to assign an LON for an applicant or individual by electronically transmitting a completed ID/RC Assessment to DADS, indicating the recommended LON and, as appropriate,

submitting supporting documentation in accordance with §9.563(b) and (c) of this subchapter (relating to DADS Review of Level of Need (LON)).

(b) The local authority must maintain the applicant's or individual's Inventory for Client and Agency Planning (ICAP) Assessment Booklet supporting the recommended LON in the applicant's or individual's record and other documentation supporting the requested LON, including:

(1) the individual's PDP, including the deliberations and conclusions of the applicant's or individual's service planning team;

(2) assessments and interventions by qualified professionals; and

(3) behavioral intervention plans.

(c) If an LON 9 is recommended, the local authority must maintain documentation that proves:

(1) the applicant or individual exhibits extremely dangerous behavior that could be life threatening to the applicant or individual or to others;

(2) a written behavior intervention plan has been implemented that meets DADS guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the extremely dangerous behavior occurs;

(3) management of the applicant's or individual's behavior requires a person to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the person supervising the individual has no other duties or activities during the period of supervision; and

(5) the individual's ID/RC Assessment is correctly scored with a "2" in the Behavior section.

(d) DADS assigns an LON for an individual based on the individual's ICAP service level score, information reported on the individual's ID/RC Assessment, and required supporting documentation.

(e) A local authority must submit

documentation supporting a recommended LON to DADS in accordance with DADS instructions regarding LON packet submission found at www.dads.state.tx.us.

(f) DADS assigns one of five LONs in accordance with §9.161 of this chapter (relating to Level of Need Assignment).

§9.563. DADS Review of Level of Need (LON).

Effective: September 1, 2014

(a) DADS may review a recommended or assigned LON at any time to determine if it is appropriate. If DADS reviews an LON, documentation supporting the LON must be submitted by the local authority to DADS in accordance with DADS request. Based on its review, DADS may modify an LON.

(b) If an LON 9 is requested, DADS may review documentation supporting the requested LON.

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted by the local authority to DADS in accordance with this subchapter and received by DADS within seven calendar days after the local authority has electronically transmitted the recommended LON.

(d) Within 21 calendar days after receiving the supporting documentation, DADS:

(1) requests additional documentation;

(2) electronically approves the recommended LON and establishes the effective date; or

(3) sends written notification that the recommended LON has been denied.

(e) DADS reviews any additional documentation submitted in accordance with DADS request and electronically approves the recommended LON or sends written notification to the local authority that the recommended LON has been denied.

§§9.564-9.565. *[Reserved for expansion.]*

§9.566. Notification of Applicants.

Effective: September 1, 2014

(a) DADS notifies a local authority, in writing, of a TxHmL Program vacancy in the MRA's local service area and directs the local authority to offer the program vacancy to the applicant:

(1) whose name is not coded in the DADS data system as having previously declined an offer to enroll in the TxHmL Program or as having been determined ineligible for the TxHmL Program and;

(A) whose registration date, assigned in accordance with §9.157(a)(1) of this chapter (relating to Maintenance of HCS Program Interest List), is earliest on the statewide waiting list for the HCS Program as maintained by DADS; or

(B) whose registration date, assigned in accordance with §9.157(a)(1) of this chapter, is earliest on the local service area waiting list for the HCS Program as maintained by the local authority in accordance with §9.157 of this chapter; or

(2) whose name is not coded in the DADS data system as having been determined ineligible for the TxHmL Program and who is receiving services from the local authority that are funded by general revenue in an amount that would allow DADS to fund the services through the TxHmL Program.

(b) The local authority must make the offer of program vacancy in writing and deliver it to the applicant or LAR by regular United States mail or by hand delivery.

(c) The local authority must include in a written offer that is made in accordance with subsection (a) of this section:

(1) a statement that:

(A) if the applicant or LAR does not respond to the offer of the program vacancy within 30 calendar days after the local authority's written offer:

(i) the local authority withdraws the offer of the program vacancy; and

(ii) the local authority codes the applicant's name in the DADS data system as having "declined" the offer of TxHmL Program enrollment; and

(B) if the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant or LAR declines the offer of the program vacancy, the local authority terminates those services that are similar to services provided under the TxHmL Program;

(2) information relating to the time frame requirements described in subsection (e)(2)-(3) of this section using the Deadline Notification form, which is available at www.dads.state.tx.us; and

(3) a statement that whether the applicant or LAR responds to the offer of program vacancy or chooses or declines participation in the TxHmL Program, the applicant's name remains on the HCS Program waiting list without change to the applicant's registration date.

(d) If an applicant or LAR responds to an offer of program vacancy, the local authority must:

(1) provide the applicant, LAR, and, if the LAR is not a family member, at least one family member (if possible) both an oral and a written explanation of the services and supports for which the applicant may be eligible, including the ICF/IID Program (both state supported living centers and community-based facilities), waiver programs authorized under §1915(c) of the Social Security Act, and other community-based services and supports using the Explanation of Services and Supports document which is available at www.dads.state.tx.us; and

(2) give the applicant or LAR the TxHmL Verification of Freedom of Choice form, which is available at www.dads.state.tx.us to document the applicant's choice regarding the TxHmL Program and ICF/IID Program.

(e) The local authority must withdraw an offer of a program vacancy made to an applicant or LAR if:

(1) within 30 calendar days after the local authority's offer made to the applicant or LAR in accordance with subsection (a) of this section, the applicant or LAR does not respond to the offer of the program vacancy;

(2) within seven calendar days after the applicant or LAR receives the TxHmL Verification of Freedom of Choice form from the

local authority in accordance with subsection (d)(2) of this section, the applicant or LAR does not document the choice of TxHmL Program services over the ICF/IID Program using the TxHmL Verification of Freedom of Choice form; or

(3) within 30 calendar days after the applicant or LAR has received the contact information regarding all available program providers in the local authority's local service area in accordance with §9.567(d)(1) of this subchapter (relating to Process for Enrollment), the applicant or LAR does not document a choice of a program provider using the Documentation of Provider Choice form.

(f) If the local authority withdraws an offer of a program vacancy made to an applicant, the local authority must notify the applicant or LAR of such actions, in writing, by certified United States mail. After DADS confirms delivery of the certified letter, DADS codes the applicant's name in the DADS data system as having "declined" the offer of TxHmL Program enrollment.

(g) If the applicant is currently receiving services from the local authority that are funded by general revenue and the applicant declines the offer of the program vacancy, the local authority must terminate those services that are similar to services provided under the TxHmL Program.

(h) If the local authority terminates an applicant's services in accordance with subsection (g) of this section, the local authority must notify the applicant or LAR of the termination, in writing, by certified United States mail and provide an opportunity for a review in accordance with §2.46 of this title (relating to Notification and Appeals Process).

(i) The local authority must retain in the applicant's record:

(1) the TxHmL Verification of Freedom of Choice form documenting the applicant's or LAR's choice of services;

(2) the Documentation of Provider Choice form documenting the applicant's or LAR's choice of program provider; and

(3) any correspondence related to the offer of a program vacancy.

§9.567. Process for Enrollment.

Effective: September 1, 2014

(a) If an applicant or LAR chooses participation in the TxHmL Program, the local authority must assign a service coordinator who develops, in conjunction with the service planning team, a PDP. At a minimum, the PDP must include the following:

(1) a description of the services and supports the applicant requires to continue living in the applicant's own home or family home;

(2) a description of the applicant's current existing natural supports and non-TxHmL Program services that will be available if the applicant is enrolled in the TxHmL Program;

(3) a description of individual outcomes to be achieved through TxHmL Program services and justification for each service to be included in the IPC;

(4) documentation that the type and amount of each service included in the applicant's IPC do not replace existing natural supports or non-TxHmL Program sources for the services for which the applicant may be eligible;

(5) documentation for each TxHmL program service of whether the service is critical to the individual's health and safety, as determined by the service planning team;

(6) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion;

(7) a statement that the applicant was provided the information regarding the CDS option as required by subsection (b) of this section;

(8) if the applicant chooses to participate in the CDS option, a description of the services provided through the CDS option; and

(9) if the applicant chooses to participate in the CDS option, a description of the applicant's service backup plan.

(b) The local authority must, in accordance with Chapter 41, Subchapter D of this title (relating to Enrollment, Transfer, Suspension, and Termination):

(1) inform the applicant or LAR of the

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applicant's right to participate in the CDS option;

(2) inform the applicant or LAR that the applicant or LAR may choose to have one or more services provided through the CDS option, as described in §41.108 of this title (relating to Services Available Through the CDS Option); and

(3) inform the applicant or LAR of the applicant's right to discontinue participation in the CDS option at any time.

(c) The local authority must compile and maintain information necessary to process the applicant's or LAR's request for enrollment in the TxHmL Program.

(1) The local authority must complete an ID/RC Assessment.

(A) The local authority must:

(i) determine or validate a determination that the applicant has an intellectual disability in accordance with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Intellectual Disability Priority Population and Related Conditions); or

(ii) verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §9.203 of this chapter (relating to Definitions).

(B) The local authority must administer the Inventory for Client and Agency Planning (ICAP) or validate a current ICAP and recommend an LON assignment to DADS in accordance with §9.562 of this subchapter (relating to Level of Need (LON) Assignment).

(2) The local authority must develop a proposed IPC with the applicant or LAR based on the PDP and §9.555 of this subchapter (relating to Definitions of TxHmL Program Services).

(d) If an applicant or LAR chooses to receive a TxHmL Program service provided by a program provider, the service coordinator must:

(1) provide names and contact information to the applicant or LAR regarding all program providers in the local authority's local service area;

(2) review the proposed IPC with potential program providers selected by the applicant or the LAR;

(3) arrange for meetings or visits with potential program providers as desired by the applicant or the LAR;

(4) ensure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or LAR, and retained by the local authority in the applicant's record;

(5) negotiate and finalize the proposed IPC with the selected program provider;

(6) ensure that the proposed IPC includes a sufficient number of RN nursing units for the program provider's RN to perform an initial nursing assessment, unless, as described in §9.578(r) of this subchapter (relating to Program Provider Certification Principles: Service Delivery):

(A) nursing services are not on the proposed IPC and the applicant or LAR and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(B) a nursing task will be performed by an unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician; and

(7) if an applicant or LAR refuses to include a sufficient number of RN nursing units on the proposed IPC for the program provider's RN to perform an initial nursing assessment as required by paragraph (6) of this subsection:

(A) inform the applicant or LAR that the refusal:

(i) will result in the applicant not receiving nursing services from the program provider; and

(ii) if the applicant needs community support, day habilitation, employment assistance, supported employment, or respite from the program provider, will result in the applicant not receiving the service unless, as described in §9.578(s) of this subchapter:

(I) the program provider's unlicensed service provider does not perform nursing tasks in the provision of the service; and

(II) the program provider

determines that it can ensure the applicant's health, safety, and welfare in the provision of the service; and

(B) document the refusal of the RN nursing units on the proposed IPC for an initial assessment by the program provider's RN in the applicant's record.

(e) After the selected program provider agrees to provide the services listed on the IPC, the local authority must submit enrollment information, including the completed ID/RC Assessment and the proposed IPC to DADS. DADS notifies the applicant or LAR, the selected program provider and FMSA, if applicable, and the local authority of its approval or denial of the applicant's program enrollment based on the eligibility criteria described in §9.556 of this subchapter (relating to Eligibility Criteria).

(f) If a selected program provider initiates services before DADS notification of enrollment approval, the program provider may not be reimbursed in accordance with §9.573(a)(5)(M) of this subchapter (relating to Reimbursement).

§9.568. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs), and Levels of Need (LONs) for Enrolled Individuals.

Effective: September 1, 2014

(a) At least annually, and before the expiration of an individual's IPC, the service planning team and the program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, initiates revisions to the IPC in response to changes in the individual's needs and identified outcomes as documented in the current PDP.

(2) The service coordinator must electronically transmit annual renewals and necessary revisions of the IPC to DADS for approval and retain documentation as described in §9.567 of this subchapter (relating to Process for Enrollment) and §9.558 of this subchapter (relating to Individual Plan of Care (IPC)).

(b) The service coordinator must electronically transmit annual evaluations of LOC or revisions of LOC to DADS for approval in accordance with §9.560 of this subchapter (relating to Level of Care (LOC) Determination).

(c) The local authority must re-administer the ICAP to an individual in accordance with paragraph (1) of this subsection and must electronically transmit an ID/RC Assessment to DADS recommending a revision of the individual's LON assignment if the ICAP results indicate a change of the individual's LON assignment may be appropriate.

(1) The ICAP must be re-administered three years after an individual's enrollment and every third year thereafter unless, before that date:

(A) changes in the individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature; or

(B) the individual's skills and behavior are inconsistent with the individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to DADS in accordance with §9.563 of this subchapter (relating to DADS Review of Level of Need (LON)).

(3) The local authority must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

§9.569. [Repealed]

§9.570. Termination and Suspension of TxHmL Program Services.

Effective: September 1, 2014

(a) DADS may terminate an individual's TxHmL Program services if:

(1) the individual no longer meets the eligibility criteria specified in §9.556 of this subchapter (relating to Eligibility Criteria);

(2) the individual or LAR requests that TxHmL Program services be terminated; or

(3) the individual or LAR refuses to

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cooperate in the provision or planning of services and:

(A) the refusal is documented by the program provider and the service coordinator; and

(B) the service coordinator has explained to the individual or LAR, in writing, that the refusal may result in termination of TxHmL Program services.

(b) DADS proposed termination of an individual's TxHmL Program services may be based on a local authority's request as described in subsection (c) of this section.

(c) To request that DADS terminate an individual's TxHmL Program services, the individual's service coordinator must, within 14 calendar days after determining that one of the reasons in subsection (a) of this section exists, submit a written request containing the following information to DADS and provide a copy of the request to the individual or LAR:

(1) the reason termination is requested;

(2) a plan documenting, as appropriate:

(A) that, before submission of the request for termination, the individual or LAR was informed of the individual's option to transfer to another program provider and the consequences of termination, including the ability of the individual to receive TxHmL Program services in the future; and

(B) the individual or LAR was informed of the potential service resources to use following termination of the individual's TxHmL Program services; and

(3) if termination is recommended for the reason stated in subsection (a)(3) of this section:

(A) a description of the action by the individual or LAR demonstrating refusal to cooperate in the provision or planning of services and the effect of such action on the planning or provision of services;

(B) a description of the attempts by the program provider and service coordinator, including face-to-face meetings between the service coordinator and individual or LAR, to resolve the circumstances causing the individual's or LAR's refusal to cooperate; and

(C) a copy of a written explanation

sent by the service coordinator to the individual or LAR explaining the consequences of the individual's or LAR's refusal to cooperate.

(d) If DADS proposes termination of an individual's TxHmL Program services, DADS sends a written notice of the proposed termination and the right to request a fair hearing required by §9.571 of this subchapter (relating to Fair Hearings) to the individual or LAR, the program provider, and the local authority.

(e) If the reason for the proposed termination is that the individual no longer meets the eligibility criteria described in §9.556(a)(4) and (7) of this subchapter, the service coordinator must, at DADS request:

(1) inform the individual or LAR that DADS, based on availability, offers the individual a program vacancy in the HCS Program in accordance with §9.158(a)(3) of this chapter (relating to Process for Enrollment of Applicants); and

(2) offer to assist the individual or LAR to apply for other services for which the individual may be eligible including other home and community-based service programs and ICF/IID Program services.

(f) If an individual is temporarily admitted to one of the following settings, DADS suspends TxHmL Program services during that admission:

(1) a hospital;

(2) an ICF/IID licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 252 or certified by DADS;

(3) a nursing facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 242;

(4) a residential child-care operation licensed or subject to being licensed by DFPS;

(5) a facility licensed or subject to being licensed by the Department of State Health Services;

(6) a facility operated by the Department of Assistive and Rehabilitative Services; or

(7) a residential facility operated by the Texas Juvenile Justice Department, a jail, or a prison.

§9.571. Fair Hearings.

Effective: September 1, 2014

An applicant or individual whose request for eligibility for the TxHmL Program is denied or is not acted upon with reasonable promptness, or whose TxHmL Program services have been terminated, suspended, or reduced by DADS, or the applicant's or individual's LAR, receives notice of the right to request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

§9.572. Other Program Provider Requirements.

Effective: September 1, 2014

Program providers must comply with United States Code, Title 42, §1396a(w), regarding requirements about advance directives.

§9.573. Reimbursement.

Effective: September 1, 2014

(a) Program provider reimbursement.

(1) DADS pays the program provider for services as described in this paragraph:

(A) Community support, nursing, respite, day habilitation, employment assistance, supported employment, behavioral support, and professional therapies are paid for in accordance with the reimbursement rate for the specific service.

(B) Adaptive aids, minor home modifications, and dental treatment are paid for based on the actual cost of the item or service and an allowed requisition fee.

(2) To be paid for the provision of a service, a program provider must submit a service claim that meets the requirements in §49.311 of this title (relating to Claims Payment) and the *TxHmL Program Billing Guidelines*.

(3) If an individual's TxHmL Program services are suspended or terminated, the program provider must not submit a claim for services provided during the period of the individual's suspension or after the termination except the program provider may submit a claim for a service provided on the first calendar day of the suspension or termination.

(4) If the program provider submits a

claim for an adaptive aid that costs \$500 or more or for a minor home modification that costs \$1,000 or more, the claim must be supported by a written assessment from a licensed professional specified by DADS in the *TxHmL Program Billing Guidelines* and other documentation as required by the *TxHmL Program Billing Guidelines*.

(5) DADS does not pay the program provider for a service or recoups any payments made to the program provider for a service if:

(A) the individual receiving the service was, at the time the service was provided, ineligible for the TxHmL Program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF/IID;

(B) the service was not included on the signed and dated IPC of the individual in effect at the time the service was provided;

(C) the service provided did not meet the service definition as described in §9.555 of this subchapter (relating to Definitions of TxHmL Program Services) or was not provided in accordance with the *TxHmL Program Billing Guidelines*;

(D) the service was not documented in accordance with the *TxHmL Program Billing Guidelines*;

(E) the claim for the service was not prepared and submitted in accordance with the *TxHmL Program Billing Guidelines*;

(F) the program provider does not have the documentation described in paragraph (4);

(G) before including employment assistance on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that employment assistance is not available to the individual under a program funded under §110 of the Rehabilitation Act of 1973 or under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(H) before including supported employment on an individual's IPC, the program provider does not ensure and maintain documentation in the individual's record that supported employment is not available to the

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individual under a program funded under the Individuals with Disabilities Education Act (20 U.S.C. §1401 et seq.);

(I) DADS determines that the service would have been paid for by a source other than the TxHmL Program;

(J) the service was provided by a service provider who did not meet the qualifications to provide the service as described in the *TxHmL Program Billing Guidelines*;

(K) the service was not provided in accordance with a signed and dated IPC meeting the requirements set forth in §9.558 of this subchapter (relating to Individual Plan of Care (IPC));

(L) the service was not provided in accordance with the PDP and the implementation plan;

(M) the service was provided before the individual's enrollment date into the TxHmL Program; or

(N) the service was not provided.

(6) The program provider must refund to DADS any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from DADS, whichever is earlier.

(7) Payments by DADS to a program provider are not withheld in the event the local authority erroneously fails to electronically transmit a renewal of an enrolled individual's LOC or IPC and the program provider continues to provide services in accordance with the most recent IPC as approved by DADS.

(b) Billing and payment reviews.

(1) DADS conducts billing and payment reviews to monitor a program provider's compliance with this subchapter and the *TxHmL Program Billing Guidelines*. DADS conducts such reviews in accordance with the *TxHmL Billing and Payment Review Protocol* set forth in the *TxHmL Program Billing Guidelines*. As a result of a billing and payment review, DADS may:

(A) recoup payments from a program provider; and

(B) based on the amount of unverified

claims, require a program provider to develop and submit, in accordance with DADS instructions, a corrective action plan that improves the program provider's billing practices.

(2) A corrective action plan required by DADS in accordance with paragraph (1)(B) of this subsection must:

(A) include:

(i) the reason the corrective action plan is required;

(ii) the corrective action to be taken;

(iii) the person responsible for taking each corrective action; and

(iv) a date by which the corrective action will be completed that is no later than 90 calendar days after the date the program provider is notified the corrective action plan is required;

(B) be submitted to DADS within 30 calendar days after the date the program provider is notified the corrective action plan is required; and

(C) be approved by DADS before implementation.

(3) Within 30 calendar days after the corrective action plan is received by DADS, DADS notifies the program provider if the corrective action plan is approved or if changes to the plan are required.

(4) If DADS requires a program provider to develop and submit a corrective action plan in accordance with paragraph (1)(B) of this subsection and the program provider requests an administrative hearing for the recoupment in accordance with §9.575 of this chapter (relating to Program Provider's Right to Administrative Hearing), the program provider is not required to develop or submit a corrective action plan while a hearing decision is pending. DADS notifies the program provider if the requirement to submit a corrective action plan or the content of such a plan changes based on the outcome of the hearing.

(5) If the program provider does not submit the corrective action plan or complete the required corrective action within the time frames described in paragraph (2) of this subsection, DADS may impose a vendor hold on payments

due to the program provider under the contract until the program provider takes the corrective action.

(6) If the program provider does not submit the corrective action plan or complete the required corrective action within 30 calendar days after the date a vendor hold is imposed in accordance with paragraph (5) of this subsection, DADS may terminate the contract.

§9.574. Record Retention.

Effective: September 1, 2014

(a) A program provider must comply with §49.307 of this title (relating to Record Retention and Disposition).

(b) A local authority must retain original records described in this subchapter necessary to disclose the extent of the services provided to the individual and, on request, provide DADS, at no cost to DADS, any such records until the latest of the following occurs:

(1) six years elapse from the date the records were created;

(2) any audit exception or litigation involving the records is resolved; or

(3) the individual becomes 21 years of age.

§9.575. Program Provider's Right to Administrative Hearing.

Effective: September 1, 2014

A program provider may request an administrative hearing in accordance with Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act) and I TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) if DADS takes or proposes to take the following action:

(1) vendor hold;

(2) contract termination;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's request for payment.

§9.576. DADS Review of a Program Provider.

Effective: July 1, 2015

(a) The program provider must be in continuous compliance with the certification principles contained in §§9.578 - 9.580 and §9.584 of this subchapter (relating to Program Provider Certification Principles: Service Delivery; Certification Principles: Qualified Personnel; Certification Principles: Quality Assurance; and Certification Principles: Prohibitions).

(b) DADS conducts an on-site certification review of the program provider, at least annually, to evaluate evidence of the program provider's compliance with certification principles. Based on its review, DADS takes action as described in §9.577 of this subchapter (relating to Program Provider Compliance and Corrective Action).

(c) After a program provider has obtained a provisional contract, DADS conducts an initial on-site certification review within 120 calendar days after the date DADS approves the enrollment or transfer of the first individual to receive TxHmL Program services from the provider under the provisional contract.

(d) If DADS certifies a program provider after completion of an initial or annual certification review, the certification period is for no more than 365 calendar days.

(e) DADS may conduct reviews of the program provider at any time.

(f) During any review, DADS may review the TxHmL Program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) DADS conducts an exit conference at the end of all on-site reviews, at a time and location determined by DADS, and at the conference gives the program provider a written preliminary review report.

(h) If a program provider disagrees with any of the findings in a preliminary review report, the program provider may request that DADS conduct an informal review of those findings.

(1) To request an informal review of any of the findings in the preliminary review report, the program provider must:

(A) complete DADS Form 3610

"Informal Review Request" as instructed on the form; and

(B) mail or fax the completed DADS Form 3610 to the address or fax number listed on the form.

(2) DADS must receive the completed form within seven calendar days after the date of the review exit conference.

(3) If DADS receives a timely request for an informal review, DADS:

(A) notifies the program provider in writing of the results of the informal review within 10 calendar days of receipt of the request; and

(B) sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

(i) If a program provider does not request an informal review as described in subsection (h) of this section, DADS sends the program provider a final review report within 21 calendar days after the date of the review exit conference.

§9.577 Program Provider Compliance and Corrective Action.

Effective: July 1, 2015

(a) DADS takes action against a program provider as a result of a review as described in this section.

(b) If DADS determines after a certification review described in §9.576(b) of this subchapter (relating to DADS Review of a Program Provider), that a program provider is in compliance with all certification principles, DADS certifies the program provider as described in §9.576(d) of this subchapter and no action by the program provider is required.

(c) DADS does not certify a program provider for a new certification period if DADS determines at a certification review, except for the initial certification review described in §9.576(c) of this subchapter, that:

(1) at the time of the certification review, the program provider is not providing TxHmL Program services to any individuals; and

(2) for the period beginning the first day of the current certification period through the 121st day before the end of the current

certification period, the program provider did not provide TxHmL Program services for at least 60 consecutive calendar days.

(d) Except as provided in subsections (j) - (l) of this section, if DADS determines from a review that a program provider's failure to comply with one or more of the certification principles is not of a serious nature, DADS requires the program provider to submit a corrective action plan to DADS for approval within 14 calendar days after the date of DADS final review report.

(e) The corrective action plan required by subsection (d) of this section must specify a date by which corrective action will be completed and such date must be no later than 90 calendar days after the date of the review exit conference.

(f) Within 14 calendar days after the date DADS receives the corrective action plan required by subsection (d) of this section, DADS notifies the program provider of whether the plan is approved or not approved. If DADS approves the plan:

(1) DADS certifies the program provider; and

(2) the program provider must complete corrective action in accordance with the corrective action plan.

(g) If the program provider does not submit a corrective action plan as required by subsection (d) of this section, or DADS notifies the program provider that the plan is not approved, DADS may:

(1) request that the program provider submit a revised corrective action plan within a time period determined by DADS;

(2) impose a vendor hold against the program provider until the program provider submits a corrective action plan approved by DADS; or

(3) deny or terminate certification of the program provider.

(h) DADS determines whether the program provider completed the corrective action in accordance with the corrective action plan required by subsection (d) of this section during DADS first review of the program provider after the corrective action completion date.

(i) If DADS determines at the end of a review that a program provider's failure to comply with one or more of the certification principles results in a condition of a serious nature, DADS:

(1) requires the program provider to complete corrective action within 30 calendar days after the date of the review exit conference; and

(2) conducts a follow-up review after the 30-day period to determine if the program provider completed the corrective action.

(j) If DADS determines from a review that a hazard to the health or safety of one or more individuals exists, DADS requires the program provider to remove the hazard by the end of the review. If the program provider does not remove the hazard by the end of the review, DADS:

(1) denies or terminates certification of the program provider; and

(2) coordinates with the local authorities the immediate provision of alternative services for the individuals.

(k) If DADS determines from a review that a program provider has falsified documentation used to demonstrate compliance with this subchapter, DADS may:

(1) impose a vendor hold against the program provider; or

(2) deny or terminate certification of the program provider.

(l) If after a review, DADS determines that a program provider remains out of compliance with a certification principle found out of compliance in the previous review, DADS:

(1) requires the program provider to, within 14 days after the review exit conference, or within another time period determined by DADS, submit evidence demonstrating its compliance with the certification principle;

(2) imposes or continues a vendor hold against the program provider; or

(3) denies or terminates certification of the program provider.

(m) If DADS imposes a vendor hold in accordance with this section:

(1) for a program provider with a provisional contract, DADS initiates termination of the program provider's contract in accordance

with §49.534 of this title (relating to Termination of Contract by DADS); or

(2) for a program provider with a standard contract, DADS conducts a follow-up review to determine if the program provider completed the corrective action required to release the vendor hold; and

(A) if the program provider completed the corrective action, DADS releases the vendor hold; or

(B) if the program provider has not completed the corrective action, DADS takes action as described in subsection (l) of this section.

(n) If DADS determines that a program provider is out of compliance with §9.579(s) or (t) of this subchapter (relating to Certification Principles: Qualified Personnel), corrective action required by DADS may include the program provider paying or ensuring payment to a service provider of community support who was not paid the wages required by §9.579(s) of this subchapter, the difference between the amount required and the amount paid to the service provider.

§9.578. Program Provider Certification Principles: Service Delivery.

Effective: September 1, 2014

(a) A program provider must serve an eligible applicant or individual who selects the program provider unless the program provider's enrollment has reached its service capacity as identified in the DADS data system.

(b) The program provider must maintain a separate record for each individual enrolled with the provider. The individual's record must include:

(1) a copy of the individual's current PDP as provided by the local authority;

(2) a copy of the individual's current IPC as provided by the local authority; and

(3) a copy of the individual's current ID/RC Assessment as provided by the local authority.

(c) The program provider must:

(1) participate as a member of the service planning team, if requested by the individual or LAR; and

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(2) develop, in conjunction with the individual, the individual's family or LAR a written implementation plan.

(d) The program provider must ensure that service provision is accomplished in accordance with the individual's PDP and the implementation plan described in subsection (c)(2) of this section.

(e) The program provider must ensure that services and supports provided to an individual assist the individual to achieve the outcomes identified in the PDP.

(f) The program provider must ensure that an individual's progress or lack of progress toward achieving the individual's identified outcomes is documented in observable, measurable terms that directly relate to the specific outcome addressed, and that such documentation is available for review by the service coordinator.

(g) The program provider must communicate to the individual's service coordinator changes needed to the individual's PDP or IPC as such changes are identified by the program provider or communicated to the program provider by the individual or LAR.

(h) The program provider must ensure that an individual who performs work for the program provider is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. The program provider must comply with local, state, and federal employment laws and regulations.

(i) The program provider must ensure that an individual provides no training, supervision, or care to another individual unless the individual is qualified and compensated in accordance with local, state, and federal regulations.

(j) The program provider must ensure that an individual who produces marketable goods and services during habilitation activities is paid at a wage level commensurate with that paid to a person without disabilities who would otherwise perform that work. Compensation must be paid in accordance with local, state, and federal regulations.

(k) The program provider must offer an individual opportunity for leisure time activities, vacation periods, religious observances, holidays,

and days off, consistent with the individual's choice and the routines of other members of the community.

(l) The program provider must offer an individual of retirement age opportunities to participate in activities appropriate to individuals of the same age and provide supports necessary for the individual to participate in such activities consistent with the individual's or LAR's choice and the individual's PDP.

(m) The program provider must offer an individual choices and opportunities for accessing and participating in community activities including employment opportunities and experiences available to peers without disabilities and provide supports necessary for the individual to participate in such activities consistent with an individual's or LAR's choice and the individual's PDP.

(n) The program provider must provide all TxHmL Program services:

(1) authorized in an individual's IPC;

(2) in accordance with the applicable service definition as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Services); and

(3) in accordance with an individual's PDP, the implementation plan, and Appendix C of the TxHmL Program waiver application approved by CMS and found at www.dads.state.tx.us.

(o) A program provider must develop a written service backup plan for a TxHmL Program service identified on the PDP as critical to meeting an individual's health and safety.

(1) A service backup plan must:

(A) contain the name of the service;

(B) specify the period of time in which an interruption to the service would result in an adverse effect to the individual's health or safety; and

(C) in the event of a service interruption resulting in an adverse effect as described in subparagraph (B) of this paragraph, describe the actions the program provider will take to ensure the individual's health and safety.

(2) A program provider must ensure that:

(A) if the action in the service backup

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plan required by paragraph (1) of this subsection identifies a natural support, that the natural support receives pertinent information about the individual's needs and is able to protect the individual's health and safety; and

(B) a person identified in the service backup plan, if paid to provide the service, meets the qualifications described in this subchapter.

(3) If a service backup plan is implemented, a program provider must:

(A) discuss the implementation of the service backup plan with the individual and the service providers or natural supports identified in the service backup plan to determine whether or not the plan was effective;

(B) document whether or not the plan was effective; and

(C) revise the plan if the program provider determines the plan was ineffective.

(p) If respite is provided in a location other than an individual's family home, the location must be acceptable to the individual or LAR and provide an accessible, safe, and comfortable environment for the individual that promotes the health and welfare of the individual.

(1) Respite may be provided in the residence of another individual receiving TxHmL Program services or similar services if the program provider has obtained written approval from the individuals living in the residence or their LARs and:

(A) no more than three individuals receiving TxHmL Program services and other persons receiving similar services are provided services at any one time; or

(B) no more than four individuals receiving TxHmL Program services and other persons receiving similar services are provided services in the residence at any one time and the residence is approved in accordance with §9.188 of this chapter (relating to DADS Approval of Residences).

(2) Respite may be provided in a respite facility if the program provider provides or intends to provide respite to more than three individuals receiving TxHmL Program services or persons receiving similar services at the same time; and

(A) the program provider has obtained written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances; and

(B) the program provider obtains such written approval from the local fire authority having jurisdiction on an annual basis.

(3) If respite is provided in a camp setting, the program provider must ensure the camp is accredited by the American Camp Association.

(4) Respite must not be provided in an institution such as an ICF/IID, skilled nursing facility, or hospital.

(q) The program provider must ensure that nursing is provided in accordance with:

(1) Texas Occupations Code, Chapter 301 (Nursing Practice Act);

(2) 22 TAC Chapter 217 (relating to Licensure, Peer Assistance, and Practice);

(3) 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(4) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(r) A program provider may determine that an individual does not require a nursing assessment if:

(1) nursing services are not on the individual's IPC and the program provider has determined that no nursing task will be performed by the program provider's unlicensed service provider as documented on DADS form "Nursing Task Screening Tool"; or

(2) a nursing task will be performed by the program provider's unlicensed service provider and a physician has delegated the task as a medical act under Texas Occupations Code, Chapter 157, as documented by the physician.

(s) If an individual or LAR refuses a nursing assessment described in §9.555(c)(10)(A) of this subchapter (relating to Definitions of TxHmL

Program Services), the program provider must not:

(1) provide nursing services to the individual; or

(2) provide community support, day habilitation, employment assistance, supported employment, or respite to the individual unless:

(A) an unlicensed service provider does not perform nursing tasks in the provision of the service; and

(B) the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service.

(t) If an individual or LAR refuses a nursing assessment and the program provider determines that the program provider cannot ensure the individual's health, safety, and welfare in the provision of a service as described in subsection (s) of this section, the program provider must:

(1) immediately notify the individual or LAR and the individual's service coordinator, in writing, of the determination; and

(2) include in the notification required by paragraph (1) of this subsection the reasons for the determination and the services affected by the determination.

(u) If notified by the service coordinator that the individual or LAR refuses the nursing assessment after the discussion with the service coordinator as described in §9.583(k)(6) of this subchapter (relating to TxHmL Program Principles for Local Authorities), the program provider must immediately send the written notification described in subsection (t) of this section to DADS.

(v) The program provider must, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of the individual in performance of the medical act, communicate the concern to the delegating physician and take additional steps as necessary to ensure the health and safety of the individual.

§9.579. Certification Principles: Qualified Personnel.

Effective: September 1, 2014

(a) The program provider must ensure the continuous availability of trained and qualified employees and contractors to provide the services in an individual's IPC.

(b) The program provider must comply with applicable laws and regulations to ensure that:

(1) its operations meet necessary requirements; and

(2) its employees or contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(c) The program provider must employ or contract with a service provider of the individual's or LAR's choice if that service provider:

(1) is qualified to provide the service;

(2) provides the service within the direct services portion of the applicable TxHmL Program rate; and

(3) contracts with or is employed by the program provider.

(d) The program provider must conduct initial and periodic training that ensures:

(1) staff members and service providers are trained and qualified to deliver services as required by the current needs and characteristics of the individual to whom they deliver services; and

(2) staff members, service providers, and volunteers comply with §49.310(3)(A) of this title (relating to Abuse, Neglect, and Exploitation Allegations).

(e) The program provider must implement and maintain personnel practices that safeguard an individual against infectious and communicable diseases.

(f) The program provider must prevent:

(1) conflicts of interest between program provider personnel and an individual;

(2) financial impropriety toward an individual;

(3) abuse, neglect, or exploitation of an individual; and

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(4) threats of harm or danger toward an individual's possessions.

(g) The program provider must employ or contract with a person who oversees the provision of TxHmL Program services to an individual. The person must:

(1) have at least three years paid work experience in planning and providing TxHmL Program services to an individual with an intellectual disability or related condition as verified by written statements from the person's employer; or

(2) have both of the following:

(A) at least three years of experience planning and providing services similar to TxHmL Program services to a person with an intellectual disability or related condition as verified by written statements from organizations or agencies that provided services to the person; and

(B) participation as a member of a microboard, as verified in writing by:

(i) the certificate of formation of the non-profit corporation under which the microboard operates filed with the Texas Secretary of State;

(ii) the bylaws of the non-profit corporation; and

(iii) a statement by the board of directors of the non-profit corporation that the person is a member of the microboard.

(h) The program provider must ensure that a service provider of community support, day habilitation, or respite is at least 18 years of age and:

(1) has a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(2) has documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(A) written competency-based assessment of the ability to document service delivery and observations of an individual to be served; and

(B) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy

environment for an individual being served.

(i) The program provider must ensure that a service provider of employment assistance or a service provider of supported employment is at least 18 years of age, is not the LAR of the individual receiving employment assistance or supported employment from the service provider, and has:

(1) a bachelor's degree in rehabilitation, business, marketing, or a related human services field, and at least six months of paid or unpaid experience providing services to people with disabilities;

(2) an associate's degree in rehabilitation, business, marketing, or a related human services field, and at least one year of paid or unpaid experience providing services to people with disabilities; or

(3) a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma, and at least two years of paid or unpaid experience providing services to people with disabilities.

(j) A program provider must ensure that the experience required by subsection (i) of this section is evidenced by:

(1) for paid experience, a written statement from a person who paid for the service or supervised the provision of the service; and

(2) for unpaid experience, a written statement from a person who has personal knowledge of the experience.

(k) The program provider must ensure that a service provider who provides transportation:

(1) has a valid driver's license; and

(2) transports individuals in a vehicle insured in accordance with state law.

(l) The program provider must ensure that dental treatment is provided by a dentist licensed in accordance with Texas Occupations Code, Chapter 256.

(m) The program provider must ensure that nursing is provided by an RN or an LVN.

(n) The program provider must ensure that adaptive aids meet applicable standards of manufacture, design, and installation.

(o) The program provider must ensure that the

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provider of behavioral support is:

(1) licensed as a psychologist in accordance with Texas Occupations Code, Chapter 501;

(2) licensed as a psychological associate in accordance with Texas Occupations Code, Chapter 501;

(3) certified by DADS as described in §5.161 of this title (relating to TDMHMR-Certified Psychologist);

(4) certified as a behavior analyst by the Behavior Analyst Certification Board, Inc.;

(5) issued a provisional license to practice psychology in accordance with Texas Occupations Code, Chapter 501;

(6) licensed as a licensed clinical social worker in accordance with Texas Occupations Code, Chapter 505; or

(7) licensed as a licensed professional counselor in accordance with Texas Occupations Code, Chapter 503.

(p) The program provider must ensure that minor home modifications are delivered by contractors who provide the service in accordance with state and local building codes and other applicable regulations.

(q) The program provider must ensure that a provider of professional therapies is licensed for the specific therapeutic service provided as follows:

(1) for audiology services, an audiologist licensed in accordance with Texas Occupations Code, Chapter 401;

(2) for speech and language pathology services, a speech-language pathologist or licensed assistant in speech-language pathology licensed in accordance with Texas Occupations Code, Chapter 401;

(3) for occupational therapy services, an occupational therapist or occupational therapy assistant licensed in accordance with Texas Occupations Code, Chapter 454;

(4) for physical therapy services, a physical therapist or physical therapist assistant licensed in accordance with Texas Occupations Code, Chapter 453;

(5) for dietary services, a licensed

dietitian licensed in accordance with Texas Occupations Code, Chapter 701; and

(6) for social work services, a social worker licensed in accordance with Texas Occupations Code, Chapter 505.

(r) The program provider must comply with §49.304 of this title (relating to Background Checks).

(s) A program provider must comply with §49.312(a) of this title (relating to Personal Attendants).

(t) If the service provider of community support is employed by or contracts with a contractor of a program provider, the program provider must ensure that the contractor complies with subsection (s) of this section as if the contractor were the program provider.

§9.580. Certification Principles: Quality Assurance.

Effective: September 1, 2014

(a) The program provider must:

(1) assist the individual or LAR in understanding the requirements for participation in the TxHmL Program and include the individual or LAR in planning service provision and any changes to the plan for service provision if changes become necessary;

(2) assist and cooperate with the individual's or LAR's request to transfer to another program provider;

(3) assist the individual to access public accommodations or services available to all citizens;

(4) assist the individual to manage the individual's financial affairs upon documentation of the individual's or LAR's written request for such assistance;

(5) ensure that any restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) inform the individual or LAR about the individual's health, mental condition, and related progress;

(7) inform the individual or LAR of the name and qualifications of any person serving the

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individual and the option to choose among various available service providers;

(8) provide the individual or LAR access to TxHmL Program records, including, if applicable, financial records maintained on the individual's behalf, about the individual and the delivery of services by the program provider to the individual;

(9) assist the individual to communicate by phone or by mail during the provision of TxHmL Program services unless the service planning team has agreed to limit the individual's access to communicating by phone or by mail;

(10) assist the individual, as specified in the individual's PDP, to attend religious activities as chosen by the individual or LAR;

(11) ensure the individual is free from unnecessary restraints during the provision of TxHmL Program services;

(12) regularly inform the individual or LAR about the individual's or program provider's progress or lack of progress made in the implementation of the PDP;

(13) receive and act on complaints about the program services provided by the program provider;

(14) ensure that the individual is free from abuse, neglect, or exploitation by program provider personnel;

(15) provide active, individualized assistance to the individual or LAR in exercising the individual's rights and exercising self-advocacy, including:

(A) making complaints;

(B) registering to vote;

(C) obtaining citizenship information and education;

(D) obtaining advocacy services; and

(E) obtaining information regarding legal guardianship;

(16) provide the individual privacy during treatment and care of personal needs;

(17) include the individual's LAR in decisions involving the planning and provision of TxHmL Program services;

(18) inform the individual or LAR of the process for reporting a complaint to DADS or

the local authority when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, including the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858) or the local authority telephone number to initiate complaints;

(19) ensure the individual is free from seclusion;

(20) inform the individual or LAR, orally and in writing, of the requirements described in paragraphs (1)-(19) of this subsection:

(A) when the individual is enrolled in the program provider's program;

(B) if the requirements described in paragraphs (1)-(19) of this subsection are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes;

(21) obtain an acknowledgement stating that the information described in paragraph (20) of this subsection was provided to the individual or LAR and that is signed by:

(A) the individual or LAR;

(B) the program provider staff person providing such information; and

(C) a third-party witness; and

(22) notify the individual's service coordinator of an individual's or LAR's expressed interest in the CDS option and document such notification.

(b) The program provider must make available all records, reports, and other information related to the delivery of TxHmL Program services as requested by DADS, other authorized agencies, or CMS and deliver such items, as requested, to a specified location.

(c) At least annually, the program provider must conduct a satisfaction survey of individuals, their families, and LARs, and take action regarding any areas of dissatisfaction.

(d) The program provider must comply with §49.309 of this title (relating to Complaint Process).

(e) The program provider must:

(1) ensure that the individual and the

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LAR are informed of how to report allegations of abuse, neglect, or exploitation to DFPS and are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing;

(2) comply with §49.310(4) of this title (relating to Abuse, Neglect, and Exploitation Allegations); and

(3) ensure that all staff members, service providers, and volunteers:

(A) are instructed to report to DFPS immediately, but not later than one hour after having knowledge or suspicion, that an individual has been or is being abused, neglected, or exploited; and

(B) are provided with the DFPS toll-free telephone number (1-800-647-7418) in writing; and

(C) comply with §49.310(3)(B) of this title.

(f) Upon suspicion that an individual has been or is being abused, neglected, or exploited or notification of an allegation of abuse, neglect or exploitation, the program provider must take necessary actions to secure the safety of the individual, including:

(1) obtaining immediate and on-going medical and other appropriate supports for the individual, as necessary;

(2) restricting access by the alleged perpetrator of the abuse, neglect, or exploitation to the individual or other individuals pending investigation of the allegation, when an alleged perpetrator is an employee or contractor of the program provider; and

(3) notifying, as soon as possible but no later than 24 hours after the program provider reports or is notified of an allegation, the individual, the individual's LAR, and the local authority of the allegation report and the actions that have been or will be taken.

(g) The program provider must ensure that staff members, service providers, and volunteers cooperate with the DFPS investigation of an allegation of abuse, neglect, or exploitation, including:

(1) providing complete access to all TxHmL Program service sites owned, operated, or

controlled by the program provider;

(2) providing complete access to individuals and program provider personnel;

(3) providing access to all records pertinent to the investigation of the allegation; and

(4) preserving and protecting any evidence related to the allegation in accordance with DFPS instructions.

(h) The program provider must:

(1) report the program provider's response to the finding of a DFPS investigation of abuse, neglect, or exploitation to DADS in accordance with DADS procedures within 14 calendar days of the program provider's receipt of the investigation findings;

(2) promptly, but not later than five calendar days from the program provider's receipt of the DFPS investigation finding, notify the individual and LAR of:

(A) the investigation finding;

(B) the corrective action taken by the program provider if DFPS confirms that abuse, neglect, or exploitation occurred;

(C) the process to appeal the investigation finding as described in Chapter 711, Subchapter M of this title (relating to Requesting an Appeal if You are the Reporter, Alleged Victim, Legal Guardian, or with Disability Rights Texas); and

(D) the process for requesting a copy of the investigative report from the program provider; and

(3) upon request of the individual or LAR, provide to the individual or LAR a copy of the DFPS investigative report after concealing any information that would reveal the identity of the reporter or of any individual who is not the individual.

(i) If the DFPS investigation confirms that abuse, neglect, or exploitation by program provider personnel occurred, the program provider must take appropriate action to prevent the recurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the DFPS investigation to have committed abuse,

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neglect, or exploitation.

(j) In all respite facilities, the program provider must post in a conspicuous location:

- (1) the name, address, and telephone number of the program provider;
- (2) the effective date of the contract; and
- (3) the name of the legal entity named on the contract.

(k) At least quarterly, the program provider must review incidents of abuse, neglect, or exploitation, complaints, temporary suspensions, terminations, transfers, and critical incidents to assess trends and identify program operation modifications that will prevent the recurrence of such incidents and improve service delivery.

(l) A program provider must ensure that all personal information maintained by the program provider or its contractors concerning an individual, such as lists of names, addresses, and records created or obtained by the program provider or its contractor, is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the TxHmL Program, and is otherwise neither directly nor indirectly used or disclosed unless the written permission of the individual to whom the information applies or the individual's LAR is obtained before the use or disclosure.

(m) The program provider must ensure that:

- (1) the individual or LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds before the charges are assessed; and
- (2) charges for items or services are reasonable and comparable to the costs of similar items and services generally available in the community.

(n) The program provider must not charge an individual or LAR for costs for items or services reimbursed through the TxHmL Program.

(o) At the written request of an individual or LAR, the program provider:

- (1) must manage the individual's personal funds entrusted to the program provider;
- (2) must not commingle the individual's personal funds with the program provider's funds;

and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(p) When a behavioral support plan includes techniques that involve restriction of individual rights or intrusive techniques, the program provider must ensure that the implementation of such techniques includes:

(1) approval by the individual's service planning team;

(2) written consent of the individual or LAR;

(3) verbal and written notification to the individual or LAR of the right to discontinue participation in the behavioral support plan at any time;

(4) assessment of the individual's needs and current level/severity of the behavior targeted by the plan;

(5) use of techniques appropriate to the level/severity of the behavior targeted by the plan;

(6) a written behavior support plan developed by a psychologist or behavior analyst with input from the individual, LAR, the individual's service planning team, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior;

(8) allowance for the decrease in the use of intervention techniques based on behavioral data;

(9) allowance for revision of the behavioral support plan when the desired behavior is not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least annual review by the individual's service planning team to determine the effectiveness of the program and the need to continue the techniques.

(q) The program provider must report the death of an individual to the local authority and DADS by the end of the next business day following the death of the individual or the program provider's knowledge of the death and, if

the program provider reasonably believes that the individual's LAR or family does not know of the individual's death, to the individual's LAR or family as soon as possible, but not later than 24 hours after the program provider learns of the individual's death.

(r) A program provider must enter critical incident data in the DADS data system no later than 30 calendar days after the last calendar day of the month being reported in accordance with the TxHmL Provider User Guide.

(s) The program provider must ensure that:

(1) the name and phone number of an alternate to the CEO of the program provider is entered in the DADS data system; and

(2) the alternate to the CEO:

(A) performs the duties of the CEO during the CEO's absence; and

(B) acts as the contact person in a DFPS investigation if the CEO is named as an alleged perpetrator of abuse, neglect, or exploitation of an individual and complies with subsections (f)-(i) of this section.

§9.581. [Reserved for expansion.]

§9.582. Compliance with TxHmL Program Principles for Local Authorities.

Effective: September 1, 2014

(a) A local authority participating in the TxHmL Program must be in continuous compliance with the TxHmL Program Principles for Local Authorities as described in §9.583 of this subchapter (relating to TxHmL Program Principles for Local Authorities).

(b) DADS conducts a compliance review at least annually of each local authority participating in the TxHmL Program.

(c) If any item of noncompliance remains uncorrected by the local authority at the time of the review exit conference, the local authority must, within 30 calendar days after the exit conference, submit to DADS a plan of correction with timelines to implement the plan after approval by DADS. DADS may take action as

specified in the performance contract between the local authority and DADS if the local authority fails to submit or implement an approved plan of correction.

§9.583. TxHmL Program Principles for Local Authorities.

Effective: September 1, 2014

(a) A local authority must notify an applicant of a TxHmL Program vacancy in accordance with §9.566 of this subchapter (relating to Notification of Applicants).

(b) A local authority must process requests for enrollment in the TxHmL Program in accordance with §9.567 of this subchapter (relating to Process for Enrollment).

(c) A local authority must have a mechanism to ensure objectivity in the process to assist an individual or LAR in the selection of a program provider and a system for training all local authority staff who may assist an individual or LAR in such process.

(d) A local authority must ensure that its employees and contractors possess legally necessary licenses, certifications, registrations, or other credentials and are in good standing with the appropriate professional agency before performing any function or delivering services.

(e) A local authority must ensure that an individual or LAR is informed orally and in writing of the following processes for filing complaints about service provision:

(1) processes for filing complaints with the local authority about the provision of service coordination; and

(2) processes for filing complaints about the provision of TxHmL Program services including:

(A) the telephone number of the local authority to file a complaint;

(B) the toll-free telephone number of DADS to file a complaint; and

(C) the toll-free telephone number of DFPS (1-800-647-7418) to file a complaint of abuse, neglect, or exploitation.

(f) A local authority must maintain for each individual:

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- (1) a current IPC;
- (2) a current PDP;
- (3) a current ID/RC Assessment; and
- (4) current service information.

(g) For an individual receiving TxHmL Program services within the local authority's local service area, the local authority must provide the individual's program provider a copy of the individual's current PDP, IPC, and ID/RC Assessment.

(h) A local authority must employ service coordinators who:

(1) meet the minimum qualifications and staff training requirements specified in Chapter 2, Subchapter L of this title (relating to Service Coordination for Individuals with an Intellectual Disability); and

(2) have received training about the TxHmL Program, including the requirements of this subchapter and the TxHmL Program services as specified in §9.555 of this subchapter (relating to Definitions of TxHmL Program Services).

(i) A local authority must ensure that a service coordinator:

(1) initiates, coordinates, and facilitates the person-directed planning process to meet the desires and needs as identified by an individual and LAR in the individual's PDP, including documenting on the PDP whether, for each TxHmL Program service identified on the PDP, the service is critical to meeting the individual's health and safety as determined by the service planning team;

(2) coordinates the development and implementation of the individual's PDP;

(3) submits a correctly completed request for authorization of payment from non-TxHmL Program sources for which an individual may be eligible;

(4) coordinates and develops an individual's IPC based on the individual's PDP;

(5) coordinates and monitors the delivery of TxHmL Program and non-TxHmL Program services;

(6) integrates various aspects of services delivered under the TxHmL Program and through non-TxHmL Program sources;

(7) records each individual's progress;

(8) develops a plan required by §9.570(c)(2) of this subchapter (relating to Termination and Suspension of TxHmL Program Services) that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(9) keeps records as they pertain to the implementation of an individual's PDP.

(j) A local authority must ensure that an individual or LAR is informed of the name of the individual's service coordinator and how to contact the service coordinator.

(k) A service coordinator must:

(1) assist the individual or LAR in exercising the legal rights of the individual as a citizen and as a person with a disability;

(2) assist the individual's LAR or family members to encourage the individual to exercise the individual's rights;

(3) inform the individual or LAR orally and in writing of:

(A) the eligibility criteria for participation in the TxHmL Program;

(B) the services and supports provided by the TxHmL Program and the limits of those services and supports; and

(C) the reasons an individual's TxHmL Program services may be terminated as described in §9.570(a);

(4) ensure that the individual and LAR participate in developing a personalized PDP and IPC that meet the individual's identified needs and service outcomes and that the individual's PDP is updated when the individual's needs or outcomes change but not less than annually;

(5) ensure that a restriction affecting the individual is approved by the individual's service planning team before the imposition of the restriction;

(6) if notified by the program provider that an individual or LAR has refused a nursing assessment and that the program provider has determined that it cannot ensure the individual's health, safety, and welfare in the provision of a service as described in §9.578(t) of this subchapter (relating to Program Provider Certification

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Principles: Service Delivery), a service coordinator must:

(A) inform the individual or LAR of the consequences and risks of refusing the assessment, including that the refusal will result in the individual not receiving:

(i) nursing services; or
(ii) community support, day habilitation, employment assistance, supported employment, or respite, if the individual needs one of those services and the program provider has determined that it cannot ensure the health, safety, and welfare of the individual in the provision of the service; and

(B) notify the program provider if the individual or LAR continues to refuse the assessment after the discussion with the service coordinator;

(7) ensure that the individual or LAR is informed of decisions regarding denial or termination of services and the individual's or LAR's right to request a fair hearing as described in §9.571 of this subchapter (relating to Fair Hearings);

(8) ensure that, if needed, the individual or LAR participates in developing a plan required by §9.570(c)(2) of this subchapter that addresses assistance for the individual after termination of the individual's TxHmL Program services; and

(9) manage the process to transfer an individual's TxHmL Program services from one program provider to another or one FMSA to another in accordance with DADS instructions, including:

(A) informing the individual or LAR who requests a transfer to another program provider or FMSA that the service coordinator will manage the transfer process;

(B) informing the individual or LAR that the individual or LAR may choose to receive TxHmL Program services from any program provider or FMSA; and

(C) if the individual or LAR has not selected another program provider or FMSA, provide the individual or LAR a list of and contact information for available TxHmL Program providers and FMSAs in the geographic locations

preferred by the individual or LAR.

(l) When a change to an individual's PDP or IPC is indicated, the service coordinator must discuss the need for the change with the individual or LAR, the individual's program provider, and other appropriate persons as necessary.

(m) At least 30 calendar days before the expiration of an individual's IPC, the service coordinator must:

(1) update the individual's PDP in conjunction with the individual's service planning team; and

(2) if the individual receives a TxHmL Program service from a program provider, submit the updated PDP to the program provider for the program provider to complete an implementation plan to accomplish the outcomes identified in the updated PDP.

(n) A service coordinator must:

(1) review the status of an individual whose services have been suspended at least every 90 calendar days following the effective date of the suspension and document in the individual's record the reasons for continuing the suspension; and

(2) if the suspension continues 270 calendar days, submit written documentation of the 90, 180, and 270 calendar day reviews to DADS for review and approval to continue the suspension status.

(o) A service coordinator must:

(1) inform the individual or LAR orally and in writing, of the requirements described in subsection (k) of this section:

(A) upon receipt of DADS approval of the enrollment of the individual;

(B) if the requirements described in subsection (k) of this section are revised;

(C) at the request of the individual or LAR; and

(D) if the legal status of the individual changes; and

(2) document that the information described in paragraph (1) of this subsection was provided to the individual or LAR.

(p) A service coordinator must comply with Chapter 41, Subchapter D of this title (relating to

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Enrollment, Transfer, Suspension, and Termination) and document compliance in the individual's record.

(q) If an individual or LAR chooses to participate in the CDS option, the service coordinator must:

(1) provide names and contact information to the individual or LAR regarding all FMSAs providing services in the local authority's local service area;

(2) document the individual's or LAR's choice of FMSA on Form 1584;

(3) document, in the individual's PDP, a description of the services provided through the CDS option; and

(4) document, in the individual's PDP, a description of the individual's service backup plan.

(r) For an individual participating in the CDS option, the local authority must recommend to DADS that FMS and support consultation, if applicable, be terminated if the service coordinator determines that:

(1) the individual's continued participation in the CDS option poses a significant risk to the individual's health, safety or welfare; or

(2) the individual or LAR has not complied with Chapter 41, Subchapter B of this title (relating to Responsibilities of Employers and Designated Representatives).

(s) If a local authority makes a recommendation under subsection (r) of this section, the local authority must:

(1) electronically transmit the individual's IPC to DADS; and

(2) in accordance with Chapter 41, Subchapter D of this title, submit documentation required by DADS in writing, to the Department of Aging and Disability Services, Access and Intake, Program Enrollment, P.O. Box 149030, Mail Code W-551, Austin, Texas 78714-9030.

§9.584. Certification Principles: Prohibitions.

Effective: September 1, 2014

A program provider must not use seclusion.